IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 991 OF 1989.

Shri Devadeveshwar Sansthan Parvati and Kothrud.] .. Appellant (Ori.Claimant)

Vs

1. The Special Land Acquisition Officer]
2. The Pune Municipal Corporation;]
3. The Charity Commissioner.] .. Respondents (Ori.Opponents)

Mr. G.M. Khambete for the appellant.

Mr. K.K. Tated for the respondent Nos.1 and 3.

Mr. R.M. Pethe with R.G. Ketkar for respondent No.2.

ALONGWITH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 992 OF 1989 .

The State of Maharashtra.] ..Appellant (Ori.Opp.No.1)

Vs

1. Prof.P.V. alias Bhausaheb Patwardhan]
2. The Pune Municipal Corporation.]
3. The Charity Commissioner.] .. Respondents (No.1 Original Claimant Nos.2 & 3 Ori. Opponent)

Mr. K.K. Tated, AGP for the appellant-State.

Mr. R.M. Pethe with R.G. Ketkar for respondent No.2.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: 10TH JUNE, 2005

ORAL JUDGMENT: [Per Anoop V. Mohta, J.]

1. By both these appeals, the judgment dated 30th June, 1988, passed by the Extra Joint District Judge, Pune, in Land Reference No.165 of 1982, have been questioned by the contesting parties namely, claimant Trust-appellant in Appeal No.991 of 1989 and original opponent No.1, the State of Maharashtra in Appeal No.492 of 1989.

2. The land in question was proposed to be acquired by letter dated 26th August, 1970. By the Notification dated 9th February, 1978, under Section 4 of the Land Acquisition Act (for short "L.A. Act"), the land situated within Pune Municipal Corporation limit, was gazetted. The land was in the Town Planning Scheme also.

3. The Land Acquisition Officer, by applying the hypothetical plotting scheme for the whole of the undeveloped land at the rate of Rs.20 per sq. meter

total compensation of Rs.3,72,600/- was awarded to the Trust. This amount was inclusive of the solatium.

4. The claimant-Trust preferred an application for enhancement of compensation at the rate of Rs.86/- per sq. meter (Rs.8 per sq. foot), as claimed initially. The opponent-State of Maharashtra resisted the same in writing before the Court, after the reference by the Land Acquisition Officer. The State of Maharashtra, however, supported the compensation awarded, being just and correct, as the valuation, by applying the hypothetical plotting scheme, was the right method as the acquired land was big and undeveloped.

5. The learned Judge, after considering the record and the evidence led by the claimant-Trust, enhanced the compensation at the rate of Rs.2/- per sq. meter. Thereby, the learned Judge granted the compensation at the rate of Rs.22/- per sq. meter instead of Rs.20/- per sq. meter.

6. Heard the learned Advocates Mr. G.M. Khambete for the claimant-Trust and Mr. K.K. Tated for the State of Maharashtra. By this common order, both the Appeals are disposed off as following calculations & reasonings are itself sufficient to maintain the

impugned judgment on all counts as contended by both the appellants. "In the Land Acquisition Manual, issued by the Government of Maharashtra in para 241, it has been observed that in case of land having non-agricultural potentiality, the market value of land held on restricted tenure is considered to be less by about 1/3 of similar land held without such restriction. Therefore, in the instant case also, the market value of the land will have to be reduced by 1/3, as the acquired land is of restricted tenure, being Inam land. It is inalienable normally. Therefore, if this reduction is done, it will be found that land value of undeveloped land in question would be Rs.44/- per Sq. Mtr. The claimant's expert has accepted that the valuation of the land ultimately will have to be done by applying hypothetical plotting schemes. The expert of the claimant agrees that for developing this plot of 16,200 Sq. Mtr. area, area of 4265 Sq. Mtr. will have to be left for internal roads and open spaces for developing the plot. Therefore, the net saleable area that will be available if the plot is developed, would be 11,835 Sq. Mtr. At the rate of Rs.44/- per Sq. Mtr., the gross realisation for 11,835 Sq. Mtr. would be Rs.5,20,740/-. From this, certain deductions will have to be made for development of the plot. The claimant's expert admits that the cost of development would be

Rs.59,914/- as has been adopted by the Land Acquisition Officer. He also admits that Rs.2995.70 would be the amount required for supervision charges. Legal charges would be 5% on the gross realisation. So the amount of deduction on account of legal charges would be Rs.26,037/-. The developer's profit would be 15% of the gross realisation as admitted by the claimant's expert. That would work out to be Rs.78,111/-. Therefore, the total deduction would be sum of all these expenses. That would be Rs.1,67,057.70. Therefore, the net realisation for the whole land would be gross amount of Rs.5,20,740/- minus Rs.1,67,057.70. This comes to Rs.3,53,683.30. This gives the land rate for the whole undeveloped land of 16,200/- Sq. Mtr. as Rs. 21.83 per Sq. Mtr. i.e. to say Rs.22/- per Sq. Mtr. as the land value. I think the Land Acquisition Officer was in error in working out the land value at the rate of Rs.20/- per Sq. Mtr. The value should have been at the rate of Rs.22/- per Sq. Mtr. as worked out above."

7. No fault could be pointed out by the counsel in this well assessed reasoning, in regard to the grant of compensation at the rate of Rs.22/- per Sq. Mtr. The learned Judge (as he then was) has rightly applied the settled principle of calculation and valuation of such land based on the Apex Court decision in the case

of **Administrator General of West Bengal Vs. Collector of Varanasi** [reported in AIR 1988, S.C., 943] i.e. (a) the post-notification sale instances can be relied if it is proved that prices were stable from post to the notification period. (b) building potentiality and large lands cannot be compared directly with small developed plots. (c) The valuation of such large lands would be subject to deduction of development expenses and certain kind of guess work and conjectures. Same is also conceded by the claimant-Trust in paragraph 8 of the judgment. The learned Judge has also took note of hilly location of the land. It is a Devasthan Inam and it has restricted tenure. The learned Judge has considered in paragraph 13, 4 sale instances and the expert's opinion.

8. We have also noted that the State of Maharashtra, therefore, had contended before the Court below that the compensation as awarded was just and correct. Now the present challenge on all these counts by the State is also not acceptable and rejected. As no new material and submission raised, above reasonings are sufficient to reject the contention of the appellant-Trust for further enhancement of the compensation.

9. The respondent No.2 Pune Municipal Corporation, for the first time, without any supportive material, stated that land in question is of zero zone value. In view of the reasoning, this contention has no force and is also rejected.

10. The counsel for the State of Maharashtra has strongly relied on **AIR 2002, S.C., 1105** [Kashiben Vs. Special Land Acquisition Officer] and objected to grant of additional compensation under Section 23(1A) of the L.A.Act as award by the Collector is dated 24th March, 1982 and as the acquisition proceedings were not pending with the Collector on 30th April, 1982, which is the foundation, as required and contemplated under Section 23(1A) of the Land Acquisition Act. The counsel for the claimant-Trust fairly conceded and was unable to support the reasoning based on the judgment in **1987, Mh.L.J., 564** [Jayawant Laxman P. Sardesai Vs. Government of Goa, Daman and Diu & Anr.] in regard to award of additional compensation of 12% per annum on the market value of the land from the date of Notification i.e. 9th February, 1978 till 24th March, 1982.

11. In view of the Apex Court’s decision and as fairly conceded, the claimant-Trust is not entitled for the additional compensation of 12% per annum as awarded.

Therefore, the following order:

O R D E R :

(a) The Appeal No.992 of 1989 of the State of Maharashtra is partly allowed and the impugned judgment dated 30th June 1988 is modified to the extent that the claimant-Trust is not entitled for the additional compensation of 12% per annum on the amount of market value of the land from 9th February, 1978, to 24th March, 1982. The claimant-Trust shall refund the said amount, if recovered, with interest at the rate of 9% per annum on the said amount, from the date of receipt of additional compensation within 4 months from the receipt of the copy of this order. Rest of the impugned judgment and order is confirmed.

(b) The Appeal No. 991 of 1989 of the claimant-Trust is dismissed.

(c) In the circumstances, there shall be no order as to costs.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]